



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on September 28, 2015 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 11, 2016 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Did the Tenant leave the unit with damages?

Is the Landlord substantiated the costs claimed?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on May 1, 2013 and ended on July 31, 2015. Rent of \$2,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord

collected \$1,150.00 as a security deposit and \$1,150.00 as a pet deposit. No move-in condition inspection was completed. The Landlord received the Tenant's forwarding address on August 11, 2015.

The Landlord states that the Tenant originally gave notice to end the tenancy for June 30, 2015 which was the end date for the fixed term lease. The Tenant required an extra month and the Parties agreed that for July 2015 the Tenant would pay rent of \$2,500.00. The Tenant also increased the combined security and pet deposit by \$200.00 to \$2,500.00.

The Landlord did not provide a detailed calculation of the \$2,500.00 being claimed. The Tenant does not dispute the cost of **\$198.50** claimed to replace a garage door remote. The Tenant does not dispute the cost of **\$9.34** claimed to replace a broken light switch.

The Landlord states that the Tenant left the unit damaged and claims \$1,800.00. The Landlord provided an invoice for this amount. The Landlord states that no monies are being claimed for cleaning the unit. The Landlord states that the Tenant left nail holes and screws in the walls, among other things. The Landlord states that he just hired the contractor to complete all the repairs and was simply given the invoice that was submitted for the hearing. The Tenant states that no nails were left other than those left in place that the Tenants used for hanging their curtains. The Tenant denies any other damage and states that the unit was fully cleaned at move-out. Both Parties provided digital images.

The Landlord claims \$149.02 for the supplies cost to repair a broken light fixture and the cost to replace the basement door lock. The Landlord states that the light fixture cost \$89.97 and was broken during the tenancy by the Tenant as the unit was brand new at move-in. The Tenant states that at move-in there were dents on the garage door, the tread of the front step was broken and the light fixture was broken. The Tenant states that they almost never used the basement door and cannot recall getting keys for that

door but in any event the Tenant did not have a basement key to return at the end of the tenancy.

The Landlord claims \$155.67 as the cost to replace a kitchen faucet. The Landlord states that in May 2014 the Tenants reported a broken and leaking faucet and the Landlord had it replaced by a plumber. The Landlord states that the plumber verbally informed the Landlord that the Tenants pushed the faucet too hard. The Landlord states that he asked the Tenant to pay the costs at the time but the Tenant refused telling the Landlord that it broke because it was a cheap product. The Tenant states that the faucet just stopped turning and that the plumber told the Tenant that it broke because it was “. . . junk” that did not last.

The Landlord claims \$270.90 for the cost to repair the fireplace in January 2015 when the Tenant reported it not working. The Landlord states that the repair person verbally informed the Landlord that the pilot light and thermostat was damaged and broken. The Landlord states that prior to this the Landlord witnessed the Tenant's child playing with the thermostat. The Tenant vehemently denies that his children, aged 17, 15 and 11 years would play with the thermostat and doubts they even know where it's located. The Tenant states that the fireplace was never touched except for the switch on the wall. The Tenant states that the fireplace only needed cleaning. The Tenant states that the thermostat for the other fireplace also later stopped working.

The Landlord states that he added \$3,000.00 to his claim for the estimated costs of gardening and landscaping required due to the Tenant's damage. The Landlord states that this work was never done, that the next tenant was not given a discount in rent for a damaged lawn or landscaping and that the unit was sold last month. The Landlord suggests that the sale price was reduced due to the damages but declined to offer any further financial evidence of such loss.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear, Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs must prove, inter alia, that costs for the damage or loss have been incurred or established. Based on the undisputed evidence of liability by the Tenant I find that the Landlord has substantiated its claims for **\$198.50** and **\$9.34**.

The invoice for the costs being claimed for repairs includes, inter alia, costs to clean the unit and stretch carpets. There are no photos that show damaged carpets and the Landlord was clear that no costs were being claimed for cleaning the unit. Further many of the Landlord's photos depict reasonable wear and tear, and the invoice includes work done to repair reasonable wear and tear, such as touch ups to the cabinets. As a result the Landlord has not substantiated the global amount of \$1,800.00 claimed. However considering the undisputed evidence of nails in the walls of the unit, I find that the Landlord has an entitlement to costs for these repairs. As there is insufficient evidence to establish the amount of these costs, I find that the Landlord has only substantiated a nominal amount of **\$200.00**.

Given the lack of supporting evidence of the reason for the failure of the faucet and considering the Tenant's equally plausible evidence of the value of the faucet and therefore the cause of its failure, I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant damaged the faucet by act or neglect. I therefore dismiss the claim for its repair.

Given the lack of a move-in condition report and considering the Tenant's undisputed and therefore credible evidence of other damages to the unit that existed at move-in

such as the broken step and dented garage door, I find that the Landlord has not provided sufficient evidence that the Tenant caused the damage to the light fixture. Given the Tenant's evidence of having no recall of a basement key and reasonably accepting that the Tenant would have been given the key, I find that the Landlord has substantiated on a balance of probabilities that the lock required replacement. Deducting a global amount of \$100.00 for the cost of the light and taxes from the claimed amount of \$149.00 leaves the costs of **\$49.00** owed by the Tenant.

As the Landlord has not provided any supporting documentation such as a statement of reason for repairs to the fireplace by the repair person and considering the Tenant's believable evidence of not causing any damage, I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant caused the fireplace to require repair. I dismiss this claimed cost.

As the Landlord provided no evidence of loss or costs incurred in relation to the yard, I dismiss the claim for damage to the yard.

As the Landlord has only been minimally successful with its application I find that the Landlord is only entitled to recovery of half the \$100.00 filing fee for a total entitlement of **\$506.84** (\$456.84 + **50.00**).

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in. As the Landlord failed to conduct a move-in inspection and complete a condition report I find that the Landlord's right to claim against the security and pet deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Since the Landlord's right to claim against the security deposit was extinguished at move-in the Landlord was required to return the security deposit in full to the Tenant following the receipt of the Tenant's forwarding address. The Landlord would have still remained at liberty to make its application. However since the Landlord retained the security deposit, I find that the Landlord must now repay the Tenant double the combined security and pet deposit plus zero interest of **\$5,000.00** (\$2,500.00 x 2). As the Tenant has been successful with its claim I find that the Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$5,050.00**.

Deducting the Landlord's entitlement of **\$506.84** from the Tenant's entitlement leaves **\$4,543.16** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,543.16**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2016

---

Residential Tenancy Branch